

**EXHIBIT 12 TO**  
**STATEMENT OF FACTS**

ORIGINAL

1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x  
SEXY HAIR CONCEPTS, LLC,

) Opposition No.  
) 125,739  
)

Opposer,  
)

-v-  
)

V SECRET CATALOGUE, INC.,  
)

Applicant.  
)  
-----x

RECEIVED  
JAN 09 2005  
FILE

DEPOSITION OF KATHI VAN ZANDT

New York, New York

Thursday, January 13, 2005

Reported by:

NICOLE TERLIZZI KOCHY, CSR, RPR

**TOBY FELDMAN**

INCORPORATED

One Penn Plaza . New York, New York 10119 . tel . 212.244.3990 . fax . 212.268.4828

January 13, 2005

10:06 a.m.

DEPOSITION of KATHI VAN ZANDT, held at the  
offices of Victoria's Secret Beauty, 888 7th Avenue,  
New York, New York, Pursuant to Notice, before  
Nicole Terlizzi Kochy, a New Jersey Certified  
Shorthand Reporter, Registered Professional Reporter  
and Notary Public of the States of New York and New  
Jersey.

**TOBY FELDMAN**  
INCORPORATED

**NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS**  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

A P P E A R A N C E S:

BALLARD, SPAHR, ANDREWS & INGERSOLL, LLP  
Attorneys for Opposer  
1735 Market Street  
Philadelphia, Pennsylvania 19103  
BY: ROBERTA JACOBS-MEADWAY, ESQ. \_\_\_\_\_

COLUCCI & UMANS  
Attorneys for Applicant  
218 East 50th Street  
New York, New York 10022  
BY: FRANK J. COLUCCI, ESQ.

TOBY FELDMAN  
INCORPORATED

NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

Van Zandt

A. By Time Warner. I was the copy and promotion director of Fortune Magazine.

Q. During what period of time were you employed by Time Warner?

A. Let's see, what year was it? It was for about three to four years. I believe right before here. So maybe it was 1995.

Q. All right. And prior to Time Warner were you employed?

A. Yes.

Q. By whom?

A. I was at Vogue Magazine.

Q. And what were your duties and responsibilities at Vogue?

A. I was the director of copy and sort of protective of the brand voice and ran what essentially was an in-house advertising agency for Vogue.

Q. During what period of time was this?

A. This was for eight years, so prior to Time Warner.

Q. And prior to Vogue were you employed?

A. I was at Hearst Magazines.

Q. And what were your duties and

**TOBY FELDMAN**  
INCORPORATED

NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

Van Zandt

19

1  
2 A. Well, it was used in store. We did an  
3 in-store test, I think it was 90 stores that we  
4 launched in.

5 Q. And do you recall what specific hair care  
6 products were involved in this test?

7 A. I think it was about 12 products. It was  
8 shampoos, conditioners that were depending upon hair  
9 type and then there was, I believe, five styling  
10 products, I think. We've since lost one, but I  
11 think there were five.

12 Q. Do you recall what one you lost?

13 A. It was a gel; we have a couple of gels. I  
14 think it was a structuring gel or texturizing gel.  
15 I'm not sure exactly the form.

16 Q. And what was the result of the in-store  
17 testing?

18 A. People loved it and it was successful.

19 Q. Now, getting back to the application which  
20 was filed in the United States Patent and Trademark  
21 Office to register So Sexy, do you know whether a  
22 statement of use has been filed?

23 A. I believe so.

24 MS. JACOBS-MEADWAY: Mr. Colucci, are you  
25 contending the statement of use was filed for

**TOBY FELDMAN**  
INCORPORATED

NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

Van Zandt

1  
2 A. I believe my, one of my writers wrote it,  
3 so I proofed it and edited it.

4 Q. According to that document that you  
5 prepared, the recipient of that direct mailer would  
6 be directed to go where to purchase a So Sexy  
7 product?

8 A. Select Victoria's Secret stores. It would  
9 be one of the test stores.

10 Q. Other than the direct mailer, the  
11 educational piece, we talked about point of sale, we  
12 talked about the package copy, we talked about the  
13 positioning statement, do you recall preparing any  
14 other documents in connection with the new hair care  
15 line for Victoria's Secret Beauty?

16 A. No.

17 MR. COLUCCI: I offer Exhibit, I think I  
18 offered Exhibit X. I offer all the succeeding  
19 exhibits Y, Z, AA all the way through the last  
20 one which I believe was DD in evidence. Do you  
21 have any objection statements?

22 MS. JACOBS-MEADWAY: I'll reserve on  
23 objections.

24 MR. COLUCCI: I have no further questions  
25 of this witness. You may cross-examine.

**TOBY FELDMAN**  
INCORPORATED

NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

Van Zandt

correct?

A. Right, yes.

Q. So would you then consider selling fragrance under the same mark as the hair care once you've made that decision not to do that?

A. No, but -- No.

Q. What other products were listed in the application that you had the law firm prepare for the So Sexy brand?

A. I don't recall at the moment.

Q. Was there ever a decision made that Victoria's Secret Beauty would not be selling all of the products identified in the application for registration that you had Mr. Colucci's firm file?

A. Yes. I believe we, I believe we decided not to expand the collection.

Q. And when was that decision made?

A. I can't recall.

Q. Approximately when?

A. A few years ago.

Q. Was the decision made before the hair care products were introduced into the test stores?

A. I don't recall the timing exactly.

Q. Was the application for So Sexy ever meant

**TOBY FELDMAN**

**INCORPORATED**

**NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS**  
court reporting . videoconferencing . video . translations . tape transcriptions . scanning



Van Zandt

to delete the goods that Victoria's Secret Beauty no longer intended to sell under the mark?

A. I don't know.

Q. Did you ever direct Mr. Colucci to delete from the application any of the goods which Victoria's Secret Beauty no longer intended to sell?

A. I believe I did, but I really can't recall definitively.

Q. Who was involved in the decision not to sell additional products under the So Sexy brand?

A. Sherry Baker and the marketing team.

Q. And who was involved in the decision to discontinue one of the items in the So Sexy line?

A. That would be the marketing team.

Q. And what was the basis for that decision?

A. I believe that it wasn't performing well or the formula was not up to snuff or something. I'm not a hundred percent sure.

Q. When was the product discontinued?

A. I think it was this year. Or 2004 rather.

Q. Was that in 2004 before the rollout beyond the test stores or not?

A. I do not know.

Q. Has any product been added to the So Sexy

**TOBY FELDMAN**

**INCORPORATED**

**NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS**

court reporting . videoconferencing . video . translations . tape transcriptions . scanning